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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/631,103	07/31/2003	Anthony J. Hynes	PREC-3612	7750
5469	7590	09/03/2008	EXAMINER	
SCHMEISER, OLSEN & WATTS			BRINSON, PATRICK F	
22 CENTURY HILL DRIVE				
SUITE 302			ART UNIT	PAPER NUMBER
LATHAM, NY 12110			3754	
			MAIL DATE	DELIVERY MODE
			09/03/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/631,103	Applicant(s) HYNES ET AL.
	Examiner Patrick F. Brinson	Art Unit 3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 19 June 2008.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-10,13-23,25,26,29 and 31-34 is/are pending in the application.
- 4a) Of the above claim(s) 24 is/are withdrawn from consideration.
- 5) Claim(s) 1-10,13-22 and 29 is/are allowed.
- 6) Claim(s) 23,25,26 and 31-34 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____
- 5) Notice of Informal Patent Application
- 6) Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 31, 32 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. 1,311,354 to **King**.

The patent to **King** discloses a method of precision dispensing of material comprising providing a device including a frame which includes a base (3), a rotatable threaded shaft (6) and a rotatable metering element (20), providing a reservoir (14), within the device, wherein the reservoir directly holds a quantity of material providing a compressible material line being attached to and extending from the reservoir. A thin strip of pliable metal (15) functions as a clamp above the base. **King** also discloses positioning the compressible material line between the metering element and base, moving the metering element through rotating the threaded shaft, causing translation motion of the metering device of a precise unit. The method also includes the step of dispensing precise unit of material from the device, as recited in claims 31 and 32. The metering element is a pinch roller type and includes a carriage block (8) attached to the roller wherein the compressible line is positioned beneath the pinch

roller and wherein the rotatable shaft is a ball screw shaft that operationally engages and translationally moves the carriage block of the metering element, as recited in claim 34.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 23, 25, 26 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over **King**.

The patent to **King** discloses the recited structure and method with the exception of specifically disclosing that the metered amount is within +/- 2% of the desired quantity, however it would have been obvious to one having ordinary skill in the art at the time the invention was made to dispense the material at +/- 2% of the desired quantity, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. Wherein the rotatable shaft is threaded, it is believed that the rotation of knob (7) will allow for a more precise dispensing of material.

Response to Amendment

3. Applicant argues that the **King** reference does not disclose the reservoir having a compressible line that is attached thereto. The device of **King** does not disclose a reservoir, however, the material placed within the device, i.e., toothpaste which directly holds material therein and has a compressible line attached to and extending from the reservoir.

Allowable Subject Matter

4. Claims 1-10, 13-22 and 29 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Patrick F. Brinson** whose telephone number is (571) 272-4897. The examiner can normally be reached on M-F 7:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Kevin P. Shaver** can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Patrick F. Brinson/
Primary Examiner, Art Unit 3754

P. F. Brinson
September 1, 2008